

# **REQUESTING AN ORDER FOR YOUR SPOUSE TO HELP PAY FOR AN ATTORNEY TO REPRESENT YOU IN YOUR DIVORCE CASE**

## **The Probate and Family Court can order one spouse to pay a retainer fee for an attorney for the other spouse in a divorce case**

Whether you are the plaintiff or the defendant in a divorce case, the Probate and Family Court can order your spouse to pay a retainer fee for an attorney for you in a divorce case. Chapter 208, section 17 of the General Laws says: "The court may require either party to pay into court for the use of the other party during the pendency of the action [for divorce] an amount to enable him to maintain or defend the action."

### **What is a retainer?**

A retainer is an amount of money that an attorney may require a client to pay in advance in order for the attorney to begin work on the case. The attorney then uses this money to pay for the services he or she provides and for legal costs and expenses. The attorney may require that the client pay additional money for his or her fees as the case proceeds.

### **When should you ask the Court to order that your spouse pay an attorney's retainer for you?**

You will need to prove to the Court that you do not have enough money to pay the retainer for a lawyer and also that your spouse does have enough income or assets to pay for the retainer. Both you and your spouse will have to file a financial statement which states all your income, expenses, and assets. The Court will look at the financial statements to determine whether or not to order your spouse to pay the retainer fee for an attorney for you.

### **This packet contains the following forms that are used to obtain an attorney's retainer order:**

- PLAINTIFF'S MOTION FOR AN ORDER THAT DEFENDANT PAY A REASONABLE AMOUNT TOWARD PLAINTIFF'S COST OF RETAINING AN ATTORNEY
- DEFENDANT'S MOTION FOR AN ORDER THAT PLAINTIFF PAY A REASONABLE AMOUNT TOWARD DEFENDANT'S COST OF RETAINING AN ATTORNEY
- FINANCIAL STATEMENT FORMS
- ORDER FOR COSTS TO RETAIN AN ATTORNEY

# INSTRUCTIONS FOR COMPLETING THE FORMS

**COMPLETE the “PLAINTIFF’S MOTION TO ORDER DEFENDANT TO PAY A REASONABLE AMOUNT TOWARD PLAINTIFF’S COST OF RETAINING AN ATTORNEY” or the “DEFENDANT’S MOTION TO ORDER PLAINTIFF TO PAY A REASONABLE AMOUNT TOWARD DEFENDANT’S COST OF RETAINING AN ATTORNEY”**

1. Print the name of the county where the case is filed in the top line of the MOTION.
2. Print the docket number of your case if you know it.
3. If you are filing the divorce, you are the Plaintiff. Print your name where it says Plaintiff. Print your spouse’s name where it says Defendant.  
  
If your spouse filed the divorce, you are the Defendant. Print your spouse’s name where it says Plaintiff. Print your name where it says Defendant
4. Print your name after the word “I” in the first sentence of the MOTION.
5. In Paragraph no. 4 of the MOTION, check all the issues that you think there may be a disagreement between you and your spouse. This will let the Court know how many issues may have to be decided by the Court.
6. In Paragraph no. 7 of the MOTION, write the amount of money that you need to pay a retainer. If you have already talked to an attorney and he or she told you what the retainer will be, you should write that amount. If you don’t know how much you will need, cross out the words “\$\_\_\_\_\_, or in the alternative”, like this.
7. After the words, “I ask that this honorable Court order the Defendant [or Plaintiff] to pay into the Court the sum of”, write the amount of the retainer fee that you requested in Paragraph no. 7, if you put an amount there.
8. If you are the Defendant and have not filed an Answer to the Complaint for Divorce, check both boxes after the words, “I ask that this honorable Court.”
9. Sign your name and then print your name; address and telephone number. If your address and phone number are impounded, write “Impounded.”
10. *Arrange a date (by speaking to the appropriate clerk) for a hearing on your MOTION. You will complete the Certificate of Service/Notice of Hearing after you get a hearing date from the clerk.*
11. After you get the hearing date complete the CERTIFICATE OF SERVICE and NOTICE OF MOTION section of the MOTION.
  - a. Print your spouse’s name and address where indicated. If your spouse

has an attorney, write the name and address of the attorney, not your spouse's name and address.

- b. Write the date, time, and name of the city/town where the hearing will take place.
- c. Sign and date the CERTIFICATE OF SERVICE with the date that you mail the MOTION to your spouse or the attorney.

### **COMPLETE THE "ORDER FOR COSTS TO RETAIN AN ATTORNEY" FORM**

Fill in the name of the county, docket number, plaintiff and defendant as you did on the Motion. The Judge will fill in the rest after the hearing.

### **COMPLETE A FINANCIAL STATEMENT.**

This is a very important document which you will sign swearing that it is true. It is important that it is accurate. Take time to get all the relevant documents and make sure it is filled out accurately. Your Financial Statement may be used many times during the divorce proceedings, so you want to make sure that you fill it out correctly.

The Register's Office may have printed instructions about how to fill out the Financial Statement. Ask a clerk if they have those instructions. Also, the Probate and Family Court has prepared instructions which are available at <http://www.mass.gov/courts/courtsandjudges/courts/probateandfamilycourt/selfhelp.html>

### **FILE THE DOCUMENTS AND MAIL COPIES**

1. Before you file the documents with the Court, make two copies of each document, one for your records and one to send to your spouse or his/her attorney.
2. File the original documents with the Court. The Court staff will explain how to get a hearing for your Motion. After you get the hearing date, fill in the bottom section of your Motion, the date and time when the hearing will be.
3. Mail a copy of your MOTION, ORDER, and completed FINANCIAL STATEMENT and a blank FINANCIAL STATEMENT form to your spouse or his/her attorney. Before you mail these copies, make sure that the bottom section of the MOTION has the date, time, and place of the hearing and that you sign and date it with the date that you mail the documents.

### **ON THE DAY OF THE HEARING GO TO THE ASSIGNED COURTROOM AND BE PREPARED TO TELL THE JUDGE WHY YOU NEED AN ORDER FOR A RETAINER**

**These Instructions and Forms were produced by Greater Boston Legal Services and Massachusetts Law Reform Institute, with the support and approval of the Chief Justice of the Probate and Family Court.**

\_\_\_\_\_, ss                      Docket No. \_\_\_\_\_  
 (County)

Docket No.

I, \_\_\_\_\_ (Plaintiff's printed name), Plaintiff in this case, respectfully move that this Court order the Defendant to pay forthwith, a reasonable amount toward the cost of my retaining an attorney to represent me in this divorce case.

1. I have filed a Complaint for Divorce.
2. I believe that I have a good cause of action, and I intend in good faith to prosecute it and to use for such prosecution any allowance made.
3. I do not have an attorney to represent me.
4. I believe that each of the following issues will need to be resolved:
  - ☐ The grounds for divorce stated in my Complaint for Divorce
  - ☐ Custody of the minor child(ren)
  - ☐ Visitation with the minor child(ren)
  - ☐ Child support
  - ☐ Alimony
  - ☐ Division of our marital property and/or debts
  - ☐ Medical insurance and expenses
  - ☐ Tax exemptions and/or other tax issues
  - ☐ Other issues: \_\_\_\_\_
5. I do not have sufficient funds to retain an attorney.
6. I believe that the Defendant has sufficient income and/or assets to contribute a reasonable amount for me to retain an attorney to represent me in this case.

7. To retain an attorney to represent me in this case, I believe that I will need \$ \_\_\_\_\_, or, in the alternative, a reasonable amount to be determined by the Court.

I certify that each of the above statements is true.

For the above reasons, I ask that this honorable Court order the Defendant to pay into the Court the sum of \$ \_\_\_\_\_ or a reasonable amount to be determined by the Court as an allowance for me to retain an attorney.

\_\_\_\_\_  
Signature and printed name

\_\_\_\_\_  
Address

\_\_\_\_\_  
Telephone number

NOTICE CONCERNING FINANCIAL STATEMENTS

Each party is required to file and provide the other party with a complete, accurate and sworn Financial Statement no less than two business days prior to the hearing on this Motion, the date and time of which are set forth below.

CERTIFICATE OF SERVICE and NOTICE OF MOTION

I certify that on the date listed below I mailed, postage prepaid, a copy of this MOTION, my FINANCIAL STATEMENT, and a blank FINANCIAL STATEMENT Form to:

Name of Defendant/Defendant's attorney: \_\_\_\_\_

Address: \_\_\_\_\_  
\_\_\_\_\_

This Motion will be heard on: \_\_\_\_\_ (date) at \_\_\_\_\_ (time)

at the Probate and Family Court in \_\_\_\_\_, MA

\_\_\_\_\_  
Name of city/town

Signed and dated:

\_\_\_\_\_  
Date

\_\_\_\_\_  
Plaintiff

COMMONWEALTH OF MASSACHUSETTS  
THE TRIAL COURT  
PROBATE AND FAMILY COURT

\_\_\_\_\_, ss  
(County)

Docket No. \_\_\_\_\_

\_\_\_\_\_, )  
Plaintiff )  
 )  
v. )  
 )  
\_\_\_\_\_, )  
Defendant )

DEFENDANT'S MOTION TO ORDER PLAINTIFF TO PAY A REASONABLE AMOUNT  
TOWARD DEFENDANT'S COST OF RETAINING AN ATTORNEY

I, \_\_\_\_\_ (Defendant's printed name), Defendant in  
this case, respectfully move that this Court order the Plaintiff to pay, forthwith, a  
reasonable amount toward the cost of my retaining an attorney to represent me in this  
divorce case.

My reasons, advanced in good faith, are as follows:

1. I have been served with a Complaint for Divorce filed by the Plaintiff.
2. I believe that I have a defense to the above-entitled action, and I intend in good  
faith to contest it and to use for such defense any allowance made.
3. I do not have an attorney to represent me.
4. I believe that each of the following issues will need to be resolved:  
[ ] The grounds for divorce stated in the Complaint for Divorce  
[ ] Custody of the minor child(ren)  
[ ] Visitation with the minor child(ren)  
[ ] Child support  
[ ] Alimony  
[ ] Division of our marital property and/or debts  
[ ] Medical insurance and expenses  
[ ] Tax exemptions and/or other tax issues  
[ ] Other issues: \_\_\_\_\_  
\_\_\_\_\_
5. I do not have sufficient funds to retain an attorney.

6. I believe that the Plaintiff has sufficient income and/or assets to contribute a reasonable amount for me to retain an attorney to represent me in this case.

7. To retain an attorney to represent me in this case, I believe that I will need \$ \_\_\_\_\_, or, in the alternative, a reasonable amount to be determined by the Court.

I certify that each of the above statements is true.

For each of the above reasons, I ask that this honorable Court:

" order the Plaintiff to pay the sum of \$ \_\_\_\_\_, or a reasonable amount to be determined by the Court as an allowance for me to retain an attorney to represent me in this case.

" grant me additional time to file my Answer to the Complaint.

\_\_\_\_\_  
Signature and printed name

\_\_\_\_\_  
Address

\_\_\_\_\_  
Telephone number

#### NOTICE CONCERNING FINANCIAL STATEMENTS

Each party is required to file and provide the other party with a complete, accurate and sworn Financial Statement no less than two business days prior to the hearing on this Motion, the date and time of which are set forth below.

#### CERTIFICATE OF SERVICE and NOTICE OF MOTION

I certify that on the date listed below I mailed, postage prepaid, a copy of this MOTION, my FINANCIAL STATEMENT, and a blank FINANCIAL STATEMENT Form to:

Name of Plaintiff/Plaintiff's  
attorney: \_\_\_\_\_

Address: \_\_\_\_\_  
\_\_\_\_\_

This Motion will be heard on: \_\_\_\_\_ (date) at \_\_\_\_\_ (time)

at the Probate and Family Court in \_\_\_\_\_, MA  
Name of city/town

Signed and dated:

\_\_\_\_\_  
Date

\_\_\_\_\_  
Defendant

COMMONWEALTH OF MASSACHUSETTS  
THE TRIAL COURT  
PROBATE AND FAMILY COURT

\_\_\_\_\_, ss  
(County)

Docket No. \_\_\_\_\_

\_\_\_\_\_, )  
Plaintiff )  
 )  
v. )  
 )  
\_\_\_\_\_, )  
Defendant )

ORDER FOR COSTS TO RETAIN AN ATTORNEY

\_\_\_\_\_, the Defendant/Plaintiff in the above-entitled case,  
shall forthwith pay the sum of \$ \_\_\_\_\_,  
as an allowance for the Plaintiff/Defendant to retain an attorney.

Said sum shall be paid as follows:

“ directly to the Plaintiff/Defendant

“ to the Court which shall disburse the payment upon the following terms  
and conditions:

\_\_\_\_\_

\_\_\_\_\_

“ other \_\_\_\_\_

“ It is further ordered that the defendant may have additional time to answer the  
Complaint for Divorce, until \_\_\_\_\_.

Date: \_\_\_\_\_

\_\_\_\_\_  
Justice of the Probate and Family Court